



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2012-0371; FRL- 9765-9]

#### **Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determination of Attainment of the 2006 24-hour Fine Particulate Matter Standard for the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is making a determination of attainment regarding the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as “the Philadelphia Area” or “the Area”). EPA has determined that the Philadelphia Area has attained the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS), based upon quality-assured, quality-controlled and certified ambient air monitoring data for the 2008-2010 and 2009-2011 periods. Preliminary data available for 2012 are consistent with continued attainment of the Philadelphia Area. This determination of attainment suspends the requirements for the respective state portions of the Philadelphia Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard for so long as the Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. This action is being taken under the Clean Air Act (CAA). This action does not constitute a redesignation to attainment, and the Philadelphia Area will remain designated nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Philadelphia Area, or portion thereof, meets the CAA requirements for redesignation to attainment for the standard, including an approved maintenance plan.

**DATES:** This final rule is effective on [insert date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0371**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** For inquiries related to the State of Delaware or the Commonwealth of Pennsylvania, please contact Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov). For inquiries related to the State of New Jersey, please contact Gavin Lau, (212) 637-3708, or by e-mail at [lau.gavin@epa.gov](mailto:lau.gavin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

**I. Background**

**II. Summary of Action**

**III. Final Action**

## IV. Statutory and Executive Order Reviews

### I. Background

On September 21, 2006, EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) (hereby “the 2006 annual PM<sub>2.5</sub> NAAQS”) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and promulgated a new 24-hour standard of 35 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour PM<sub>2.5</sub> standard (hereafter “the 2006 24-hour PM<sub>2.5</sub> NAAQS”) became effective on December 18, 2006. *See* 40 CFR 50.13.

Many petitioners challenged aspects of EPA’s 2006 revisions to the PM<sub>2.5</sub> NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit remanded the 2006 annual PM<sub>2.5</sub> NAAQS to EPA for further proceedings. The 2006 24-hour primary and secondary PM<sub>2.5</sub> NAAQS were not affected by the remand and remain in effect.

On November 13, 2009, EPA published designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS (74 FR 58688), which included the Philadelphia Area as a nonattainment area. Designations became effective on December 14, 2009. The Philadelphia Area is composed of New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. *See* 40 CFR 81.339 (Pennsylvania), 40 CFR 81.331 (New Jersey), and 40 CFR 81.308 (Delaware).

On October 2, 2012 (77 FR 60089), EPA published a notice of proposed rulemaking (NPR) for the States of Delaware and New Jersey and the Commonwealth of Pennsylvania, proposing to determine that the Philadelphia Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, based on the quality-controlled, quality-assured, and certified data from 2008-2010 and 2009-2011 monitoring periods. Preliminary data available for 2012 are consistent with continued attainment of the Philadelphia Area.

EPA's determination is being made in accordance with its longstanding interpretation under the Clean Data policy, and with previously issued rules and determinations of attainment. A brief description of the Clean Data Policy with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS is set forth below. In addition, the docket for this rulemaking includes documentation providing more detail regarding the application of EPA's Clean Data Policy to determinations of attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

In April 2007, EPA issued its PM<sub>2.5</sub> Implementation Rule for the 1997 annual PM<sub>2.5</sub> NAAQS. 72 FR 20586 (April 25, 2007). In March 2012, EPA published implementation guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, "Implementation Guidance for the 2006 24-Hour Final Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" (March 2, 2012). In that guidance, EPA stated its view "that the overall framework and policy approach of the 2007 PM<sub>2.5</sub> Implementation Rule continues to provide effective and appropriate guidance on the EPA's interpretation of the general statutory requirements that states should address in their SIPs. In

general, the EPA believes that the interpretations of the statute in the framework of the 2007 PM<sub>2.5</sub> Implementation Rule are relevant to the statutory requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS ...." *Id.* at page 1.

In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 annual PM<sub>2.5</sub> NAAQS and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).<sup>1</sup> EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone NAAQS, the coarse particulate matter (PM<sub>10</sub>) NAAQS, and the lead NAAQS.

In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the PM<sub>2.5</sub> NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (December 14, 2004).

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<sup>1</sup> While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 24-hour PM<sub>2.5</sub> NAAQS, the statutory interpretation that it embodies is identical and is applicable to both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the CAA are by their terms not applicable to areas that are currently attaining the NAAQS.<sup>2</sup> It is important to note that the obligation of a state with respect to an area which attains the 2006 24-hour PM<sub>2.5</sub> NAAQS based on three years of data, to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the NAAQS, the requirements for the state to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action. The docket for this rulemaking action includes documentation providing additional information regarding the basis for use of EPA's Clean Data Policy for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

## **II. Summary of Action**

In this rulemaking action, EPA is finalizing the determination of attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS for the Philadelphia Area, based on the quality-controlled, quality-assured, and certified data from 2008-2010 and 2009-2011 monitoring periods and preliminary data for 2012. EPA previously determined that the PM<sub>2.5</sub> monitoring network for the Philadelphia Area is adequate. EPA found that the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D, section 4.7, and that the monitoring network in place is in accordance with the States' most recent annual monitoring network plans approved

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<sup>2</sup> This discussion refers to subpart 1 of the CAA because subpart 1 contains the requirements relating to attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS.

by EPA, as required by 40 CFR 58.10.

EPA's review of quality-assured, quality-controlled, certified ambient air monitoring data collected in the Philadelphia Area during 2008-2010 and 2009-2011 shows that the Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS. Additionally, preliminary PM<sub>2.5</sub> data available for 2012 is consistent with continued attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Philadelphia Area.

No public comments were submitted in response to the NPR, published on October 2, 2012 (77 FR 60089). EPA's evaluation of air quality data and additional information regarding the monitoring network and air quality data used in this determination are available in the NPR and in the Technical Support Document for the NPR and thus are not restated here. Relevant support documents for this action are available online at [www.regulations.gov](http://www.regulations.gov), Docket number **EPA-R03-OAR-2012-0371**.

### **III. Final Action**

EPA is making a determination that the Philadelphia Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, based upon quality-controlled, quality-assured and certified ambient air monitoring data for the 2008-2010 and 2009-2011 periods. Preliminary data available for 2012 are consistent with continued attainment. This final action, in accordance with the Clean Data Policy (which is reflected in 40 CFR 51.1004(c)), suspends the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to the attainment of the standard, for so long

as the Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. This determination is not equivalent to the redesignation of the Philadelphia Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that the Area has violated the 2006 24-hour PM<sub>2.5</sub> NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Philadelphia Area, and the Area would thereafter have to address the applicable requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Finalizing this determination does not constitute a redesignation of the Philadelphia Area to attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS under section 107(d)(3) of the CAA, nor does it involve approving a maintenance plan for the Philadelphia Area as required under section 175A of the CAA. This determination does not address other requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable emission reductions.<sup>3</sup> The designation status of the Philadelphia Area will remain nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Philadelphia Area, or portion thereof.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a determination of attainment, which suspends the obligation to submit certain

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<sup>3</sup> The monitoring data from the 2008-2010 and 2009-2011 monitoring periods that are relied on in this notice may be impacted by reductions associated with the Clean Air Interstate Rule (CAIR), which was remanded to EPA in 2008. *See North Carolina v. EPA*, 531 F.3d 896, *as modified on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008). Nonetheless, because this determination addresses only whether the monitoring data shows attainment, at this time EPA need not address whether such attainment was due to the remanded CAIR.



attainment-related CAA planning requirements that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction,” and section 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s rule relieves the affected states of the obligation to submit certain attainment-related planning requirements for this PM<sub>2.5</sub> nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

#### **IV. Statutory and Executive Order Reviews**

##### **A. General Requirements**

This action, which makes a determination of attainment for the Philadelphia Area based on air quality, results in the suspension of certain Federal requirements and does not impose any additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination of attainment of the Philadelphia Area with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action, in which EPA has determined that the Philadelphia Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 10, 2012.

W. C. Early,  
Acting Regional Administrator,  
Region III.

Dated: December 13, 2012.

Judith A. Enck,  
Regional Administrator,  
Region II.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I -- Delaware

2. Section 52.427 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.427 Control strategy: Particulate matter.

\* \* \* \* \*

(b) Determination of Attainment. EPA has also determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the State of DE to submit, for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> nonattainment area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Subpart FF -- New Jersey

3. Section 52.1602 is amended by adding paragraph (e) to read as follows:

§ 52.1602 Control strategy and regulations: PM<sub>2.5</sub>.

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(e) Determination of Attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> nonattainment area, to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Subpart NN -- Pennsylvania

4. Section 52.2059 is amended by adding paragraph (h) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

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(h) Determination of Attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the Commonwealth of Pennsylvania to submit, for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures,

and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

[FR Doc. 2012-31565 Filed 01/04/2013 at 8:45 am; Publication Date: 01/07/2013]